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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. BARRY LAMAR BONDS, Defendant.	Case No. CR 07 0732 SI **DEFENDANT'S RESPONSE TO UNITED STATES' OPPOSITION TO MOTION TO SEAL**

Defendant respectfully submits the following in response to the Government's Opposition to Defendant's Motion to Seal.

1. The Defendant's Motion to Seal was filed in an abundance of caution. The defense has received thousands of pages of discovery from the Government, including Grand Jury transcripts, and Grand Jury exhibits. In some instances it is not possible to determine whether particular documents were originally obtained by the Government by a Grand Jury Subpoena, or a search warrant, or other means.

Especially in light of the rancorous history of the BALCO litigation, the defense did not

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want its Motion in Limine to be greeted by a Government claim that Grand Jury secrecy had been violated, or the confidentiality of discovery materials had somehow been breached. Those concerns are now mooted because the Government has made it clear that there are no confidentiality limitations on materials supplied in discovery.

2. The Court in its discretion may wish to consider whether jury selection will be unduly burdened by immediate publication of laboratory "tests" and hearsay documents that may never come into evidence. Of course there will be a public trial at which all the testimony and other evidence will be freely accessible. That is not quite the same as endorsing publication, prior to jury selection, of inflammatory materials that the trial jury may never see.

3. What should be immediately unsealed, beyond any doubt, are all documents on file in this Court in the BALCO case. The pleas and sentencings in BALCO are years old, yet there are still sealed and redacted search warrants and sealed motions, among other things, in the Clerk's Office. In light of the Government's professed advocacy for "a presumed right of access to pretrial proceedings and documents," (United States' Opposition at page 2), the Government undoubtedly will join the defense in making sure that the entire BALCO record is finally open to public scrutiny.

This is a matter of consequence to the pending Motion in Limine. The Government's letter of December 26, 2008, suggests that it will try to use BALCO documents and one of the BALCO principals to establish a foundation for evidence against Mr. Bonds. The Government has represented that its BALCO files have been made available to the defense in discovery.

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There is no conceivable reason, then, why BALCO documents on file with the Court should any longer be sealed or redacted.

Dated: January 20, 2009

Respectfully submitted,

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By /s/Allen Ruby
Allen Ruby

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